

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: JIM YULE Facility ID #60940 Jefferson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2008-AFO- 32
--	--

TO: Jim Yule
1028 Packwood Road
Packwood, Iowa 52580

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jim Yule for the purpose of resolving the issues surrounding a manure discharge at Mr. Yule's facility and the resulting fish kill in an unnamed tributary of Richland Creek. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Russell Royce, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 and Iowa Code chapter 459 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JIM YULE

III. STATEMENT OF FACTS

1. Jim Yule owns and operates a confined animal feeding facility located at 1028 Packwood Road in rural Packwood, Iowa. Mr. Yule operates a swine finishing facility with 3,840 head (1,536 animal units).

2. On May 16, 2008, Mr. Yule contacted DNR Field Office 6 and reported there had been a manure release from the holding pit at his facility. He stated the manure had reached a drainage ditch and a tributary of Richland Creek. On the same day, Russell Royce and Bob Pyle, DNR Field Office 6 environmental specialists, responded to the report and investigated the spill. Mr. Yule showed Mr. Royce where the drainage ditch flowed into the unnamed tributary of Richland Creek. Mr. Royce observed that manure had flowed into the tributary and the field testing showed the presence of strong concentrations of ammonia in the tributary water. Mr. Yule stated that a recirculation pump had inadvertently been left on which filled the pit causing it to run over across a field into the drainage ditch. The field office personnel directed Mr. Yule to construct a dam on the drainage ditch and attempt to stop further manure discharges to the tributary. Mr. Yule did construct the dam. The field office personnel collected laboratory samples from the tributary. All samples were collected below the initial manure discharge point on Packwood Road. The field office personnel observed manure solids at the temporary dam and the culvert on Packwood Road. The solids contributed to the discoloration of the tributary from Mr. Yule's property to Richland Creek. All samples taken from the tributary had a strong manure odor. The field office personnel noted foaming in the tributary and dead fish in the area of 290th Street. Additionally, the DNR Fisheries Bureau investigated the impact of the manure discharge on the tributary. The laboratory samples collected by the field office personnel indicated the following:

Location	Biochemical Oxygen Demand	Total Suspended Solids	Ammonia	Chemical Oxygen Demand
Highway 78 Bridge	<2 mg/L	49 mg/L	0.10 mg/L	11 mg/L
Culvert on 290 th Street	266 mg/L	220 mg/L	57 mg/L	630 mg/L
Culvert on Packwood Road	119 mg/L	150 mg/L	22 mg/L	310 mg/L
Above the Dam	2,148 mg/L	1,400 mg/L	570 mg/L	6,700 mg/L

3. On May 30, 2008, a Notice of Violation letter was issued to Mr. Yule for the violations discovered during the field office investigation. The letter cited Mr. Yule for an unpermitted manure discharge and water quality violations. Mr. Yule was informed the matter was being referred for potential enforcement.

4. The fish kill evaluation by the DNR Fisheries Bureau personnel concluded that over 500 fish valued at \$79.45 were killed. The cost of performing this evaluation was \$309.03. The total fish kill assessment totals \$388.48.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JIM YULE

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. Mr. Yule's facility does not have a permit and DNR Field Office 6 found evidence of a discharge of untreated pollutants into waters of the state. The above-facts indicate a violation of this provision.

3. Iowa Code section 459.311(1) and 567 IAC 65.2(3) state the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. Manure from Yule's facility was discharged from the facility and traveled to a tributary of Richland Creek. The above-facts disclose a violation of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. DNR Field Office 6 observed manure from Mr. Yule's facility in the tributary. The field office staff observed discolored water with a manure odor as well as dead fish. The above-facts disclose a violation of one or more of these criteria.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge at Mr. Yule's facility.

V. ORDER

THHEREFORE, it is hereby ordered and Mr. Yule agrees to do the following:

1. Mr. Yule shall submit a Plan of Action to DNR Field Office 6 within 20 days after the date the Director signs this administrative consent order. The Plan of Action shall state his plan to prevent excess water from entering the manure pit;

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JIM YULE

2. Mr. Yule shall take the steps stated in the Plan of Action within 10 days after the date the DNR approves the Plan of Action and in the future shall prevent excess water from entering the manure pit;
3. Mr. Yule shall pay restitution in the amount of \$388.48 within 30 days after the date the Director signs this administrative consent order; and
4. Mr. Yule shall pay a penalty of \$2,500.00 within 30 days after the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code sections 455B.191 and 459.603 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$2,500.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Failure to properly contain all manure allowed Mr. Yule to save time and money. However, any economic benefit Mr. Yule received was minimal because of the actions Mr. Yule took following the discharge. Therefore, no economic benefit is being assessed in this administrative consent order.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by the impact to a tributary of Richland Creek, including over 500 dead fish. The manure control and water quality violations threaten the integrity of the water quality program. Based on the above considerations, \$2,250.00 is assessed for this factor.

Culpability – Mr. Yule has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Yule did take the appropriate actions upon discovering the discharge and did take the appropriate steps to minimize the impact on the tributary to Richland Creek. Based on the above considerations, \$225.00 is assessed for this factor.


IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: JIM YULE

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Jim Yule. For that reason, Jim Yule waives the right to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455.191.



RICHARD A. LEOPOLD
Iowa Department of Natural Resources

Dated this 2 day of
October, 2008.



JIM YULE

Dated this 25 day of
September, 2008.

#60940; Kelli Book; Field Office 6; Gene Tinker; EPA; I.C.1 and VIII.D.1.a

RECEIVED
SEP 26 2008